

Application No. 10/762,884
Amendment dated April 22, 2008
In Reply to Final Office Action dated February 15, 2008

BCLO-100US

Amendments to the Drawings:

The attached sheets of drawings include changes to Figures 1 and 2, along with formal drawings for Figures 3-8B. These sheets replace the original sheets.

Attachment

Remarks/Arguments:

Claims 1-18, 27-28 and 34-35 are pending. Claims 1-18, 27 and 34-35 stand rejected and claim 28 is withdrawn from consideration by the Examiner. In this response, applicants have amended claims 1, 4 and 12. Applicants respectfully request that the claims be reconsidered.

Applicants wish to thank the Examiner for the courtesy extended to applicants' representative during the telephone interview of February 28, 2008. During that interview claims 1, 12 and 27 were discussed. It was agreed that the addition the term "within" as it relates to the longitudinal aperture would overcome the 35 U.S.C. 112 rejections.

Rejections Under 35 U.S.C. § 112

The Office Action sets forth at page 2, paragraph 2, that claims 27 and 34 are rejected under 35 U.S.C. § 112, first paragraph. Specifically, it is asserted that "means for retaining said shaft within said tubular body" and "means for retaining said internal member within said external member" are not disclosed by applicant. Applicants respectfully disagree, but in order to expedite prosecution have amended the specification herein to point out features of the originally filed specification. Specifically, element numbers 160, 162 and 164 have been added to original figures 1 and 2 to point out the readily apparent features relating to the aforementioned "means." In addition, the text of the speciation has been enhanced to include those reference numbers. Specifically, the "means for retaining" is bearing portion 105 in cooperation with first end portion 162 of internal shaft 102 and second end portion 160 of internal shaft 104 in cooperation with end 164 of external tube 102, for example. No new matter is added. Applicants respectfully request therefore that the rejection of claims 27 and 34 be withdrawn and the claims allowed.

The Office Action sets forth at page 2, paragraph 4, that claims 1-18 are rejected under 35 U.S.C. § 112, second paragraph. Applicants have appropriately amended claims 1, 4 and 12, and respectfully request, therefore, that the rejection of these claims, as well as dependant claims 2-3, 5-11 and 13-18, under 35 U.S.C. § 112, second paragraph, be withdrawn and the claims allowed.

Rejections Under 35 U.S.C. § 102

The Office Action sets forth at page 4, paragraph 5, "Claims 1-7, 16-18, 27, 34 and 35 are rejected under 35 U.S.C. 102(b) as being anticipated by Cosmetto et al. ..." Applicants respectfully submit that this rejection is overcome by the amendments to the claims for the reasons set forth below.

Applicants' invention, as recited in claim 1, includes features not disclosed or suggested by Cosmetto, namely:

...an external member having i) a tubular shape with closed circumferential ends, ii) at least one aperture extending radially through a first wall to and through a second wall of said external member, and iii) an aperture within the external member extending longitudinally from a first end to a second end of the external member... (Emphasis added)

These features are described in applicants' specification, for example, at page 5, line 15 through page 6, line 3.

Applicants' invention is a device for aiding in the closure of a wound from within the wound. The device includes an external body having a tubular shape in which an internal member is rotatably coupled. The external member has closed circumferential ends and at least one aperture within the external member and extending through from one wall of the external member to the opposite wall of the external member. In addition, the internal member has at least one receiver for receiving at least one suture which passes from one side of the wound into one wall of the external member and through the internal member finally passing through the opposing wall of the external member and then to the other side of the wound. The device is then used to draw the wound closed by rotating the internal member within the external member.

Cosmetto is relied upon as "[disclosing] a device for aiding in the closure of a wound...comprising an external member (body 30) having spaced apart apertures (35), an internal member (shaft 40) rotatably coupled to the external member (30) having spaced apart receivers (apertures 41) in line with the apertures of the external member (body 30), a suture (15) passed through the receivers (41)...wherein the device is capable (emphasis added) of being placed within a wound of a human or animal if one desires to do so."

Applicants note that the Office does not state that Cosmetto discloses each and every feature of Applicants' claimed invention. For instance, Cosmetto fails to disclose or suggest that the external member (relied on by the Office as body 30) has a tubular shape with closed circumferential ends. Rather, Cosmetto discloses that the external member (body 30) is cup-shaped with open ends such that internal member (shaft 40) may easily become disengaged from the external member while in use as suggested by the Office. Applicants additionally note that the Cosmetto device is designed for external use and specifically cautions against the use of the device within the wound. This caution seems appropriate especially in view of the propensity of this device to come apart. See for example column 3, lines 43-45 and column 4, lines 50-56.

In contrast, applicants' invention, as recited in claim 1, requires an external member having i) a tubular shape with closed circumferential ends, ii) at least one aperture extending radially through a first wall to and through a second wall of the external member, and iii) an aperture within the external member extending longitudinally from a first end to a second end of the external member, and an internal member rotatably coupled to the external member, the internal member having at least one receiver for receiving the at least one suture such that the device is adapted for placement within the wound.

It is because applicants have included the features of an external member having i) a tubular shape with closed circumferential ends, ii) at least one aperture extending radially through a first wall to and through a second wall of the external member, and iii) an aperture within the external member extending longitudinally from a first end to a second end of the external member, and an internal member rotatably coupled to the external member, the internal member having at least one receiver for receiving the at least one suture such that the device is adapted for placement within the wound, that applicants are able to provide a device for aiding in the closure of a wound from within the wound by drawing the extremities of the wound toward one another under tension of sutures that pass through the device placed in the wound. Cosmetto fails to achieve this advantage because Cosmetto does not include an external member having i) a tubular shape with closed circumferential ends, ii) at least one aperture extending radially through a first wall to and through a second wall of the external member, and iii) an aperture within the external member extending longitudinally from a first end to a second end of the external member, and an internal member rotatably coupled to the external member, the internal member having at least one receiver for receiving the at least one suture such that the device is adapted for placement within the wound.

Because Cosmetto fails to disclose each and every feature of applicants' claimed invention, applicants respectfully request that the rejection of claim 1 as being anticipated by Cosmetto be withdrawn and the claim allowed.

Claims 2-3 depend upon claim 1 and, thus, are likewise not subject to rejection for at least the reasons set forth above with respect to claim 1.

Although not identical, claim 4 recites features similar to those of claim 1 and, thus, is likewise not subject to rejection for at least the reasons set forth above with respect to claim 1.

Claims 5-7 and 16-18 depend upon claim 4 and, thus, are likewise not subject to rejection for at least the reasons set forth above with respect to claim 4.

With respect to claims 27 and 34, Applicants respectfully traverse the rejection. The Office broadly relies on Cosmetto as disclosing "means for retaining." This rejection does not address the entirety of each of claims 27 and 34. Specifically, "means for retaining said shaft within said tubular body such that said shaft remains within said tubular body in response to a lateral tension exerted on said shaft." (Emphasis Added). The Office relies on Figure 18 of Cosmetto, but as is evident from Figure 18, the relied on "means" fails to retain the shaft within the tubular body such that the shaft remains within the tubular body in response to a lateral tension exerted on the shaft.

Because Cosmetto fails to disclose each and every feature of claims 27 and 34 applicants respectfully request that the rejection of claims 27 and 34 be withdrawn and the claims allowed.

With respect to claim 35, although this claim is rejected as part of the rejection of claims 1-7, 16-18, 27 and 34 above, the features of claims 35 do not fall into this broad rejection and were thus not properly considered. Applicants respectfully request that the features of claim 35 be considered and addressed by the Office in the next response.

Rejections Under 35 U.S.C. § 103

The Office Action sets forth at page 5, "Claims 8-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosmetto et al."

Because amended claim 4, from which claims 8-15 ultimately depend, is allowable over Cosmetto the rejection of claims 8-15 as being unpatentable over Cosmetto is moot. Applicants respectfully request, therefore, that the rejection be withdrawn and the claims allowed.

In view of the amendments and remarks set forth above, applicants submit that the above-identified application is in condition for allowance which action is respectfully requested.

Respectfully submitted,

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